

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 159 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

BHAGVATSINH RAMSINH RAJ

Versus

GUJARAT AGRO IND. CORPORATION LTD.

Appearance:

MR PB MAJMUDAR for Appellant

MR BR SHAH for Respondent

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 30/03/99

ORAL JUDGEMENT

This appeal under Section 96 of the Code of Civil Procedure, 1908 is directed against the judgment, order and decree dated December 24, 1981 passed by the learned City Civil Judge, Court No.4, Ahmedabad, in Civil Suit No.3584 Of 1979 dismissing the said suit filed by the appellant.

The respondent is Gujarat Agro Industries

Corporation Ltd. The appellant-plaintiff entered the service of the said Corporation in about 1979. Initially, he was appointed as Senior Serviceman and then he was posted as Service Engineer. At the relevant time, he was in charge of Bharuch Centre of the defendant. At the said centre, the respondent-Corporation was carrying on various activities such as sales of fertilisers, pesticides and tractor spare parts together with servicing and repairing of tractors. On or about February 13, 1978, the higher officers of the defendant carried out physical verification of the stocks at Bharuch Centre and it was found that there were shortages in the stocks of fertilizers and pesticides. At that time, the appellant was in charge of Bharuch Centre of the defendant. During the checking, it was also found that the appellant had in violation of the express instructions effected certain sales on credit and had thereby caused damage and financial loss to the defendant. The appellant was found to have maintained his personal account in the account books of the defendant maintained at Bharuch Centre in which large sums were shown to be outstanding against the appellant in favour of the defendant. When the appellant's attention was drawn to that fact at the time of the checking, he gave an account of some amount and thereafter deposited the balance amount which was due in that account from him. It was also found that the appellant had indulged in certain malpractices in the matter of purchase of spare parts of tractors. The statement of shortages in the stock of fertilizers and pesticides was given to the appellant and his explanation was sought. He submitted his explanation but the same was found unsatisfactory. Therefore, by a memorandum dated January 12, 1979, a charge-sheet was issued to the appellant by the Managing Director of the respondent-Corporation. Article No.1 of the charge pertained to the shortage of 892 bags of fertilizers. Article No.2 of the charge pertained to shortages in the stock of pesticides and, in that second article of the charge, it was also stated that, in disregard of the express instructions issued to him, he had effected sales to some parties on credit and had thus caused financial loss to the respondent. In each of the two articles, it was specifically stated that as regards the shortages, the appellant had admitted the same by his letter dated February 25, 1978. Article No.3 of the charge pertained to the appellant having maintained his own account in the respondent's account books and having withdrawn amounts in that account and about his having given account of the part of the amounts at the time of the physical verification or checking on or about February 13, 1978

and further about his having deposited the balance amount later on and thus he having unauthorisedly retained a large amount of money of the respondent with him and subsequently credited those amounts to the account of the respondent. In that Article No.3, it was mentioned that the appellant admitted this fact in his letter dated February 22, 1978. Article No.4 of the charge pertained to the appellant having purchased some tractor spare parts from the local dealer at Bharuch in violation of rules and regulations. Thus the allegation against the appellant was that he misused his position as In charge of Bharuch Centre and caused financial loss to the respondent which amounted to misconduct under rules 74 and 81(1) of the Service Rules.

The appellant was called upon to give his explanation as regards these charges. By letter dated 22nd January 1979, the appellant submitted his reply and explanation to the charges levelled against. Thereafter, Mr.Varia, Divisional Manager (Finance) of the appellant was appointed as an Inquiry Officer to hold an inquiry into the charges against the appellant and Mr.A.K.Shah, Manager (Finance) of the respondent, was appointed as Presenting Officer on behalf of the respondent. The Inquiry Officer held an inquiry into the charges against the appellant and submitted his report to the Managing Director of the respondent. In that report, the Inquiry Officer held the first three articles of the charge proved, while in respect of the fourth article, benefit of doubt was given to the appellant. The Managing Director thereafter issued a notice to the appellant to show cause why his service should not be terminated from the Corporation. The appellant submitted his written representation in response to that notice and he was given personal hearing by the Managing Director who thereafter passed an order dated October 17, 1979 terminating the services of the appellant. However, by way of abundant caution, the Managing Director directed that the appellant be given one month's notice pay so as to meet with all canons of justice.

Thereafter the appellant filed the suit in question on 29.10.1979 challenging the inquiry held against him, report of the Inquiry Officer and the final order terminating his services.

The appellant alleged in the plaint that the inquiry was initiated against him with a view to harassing him and that the inquiry was mala fide. He contended that the charge-sheet issued to him was not in accordance with the rules and regulations; that the

Managing Director was not competent to issue charge-sheet to him and that the Managing Director was not a competent authority so far as he was concerned. The appellant further contended that the Inquiry Officer did not complete the inquiry within the time given to him and therefore anything that was done by the Inquiry Officer after the expiry of time initially given to him was without jurisdiction, null and void. He also made a grievance that the respondent had moved the police and a criminal case was registered against him. He, therefore, contended that during the pendency of the criminal case, no inquiry could have been instituted or conducted and no order could have been passed against him before the final termination of the criminal prosecution which had been launched against him. He made a grievance that at the inquiry he was not allowed to be represented by any advocate or by the President of the Union. He alleged that the inquiry Officer did not give him inspection of the documents of which he had asked for the inspection, nor was he supplied with the copies of the documents which he demanded. According to the appellant, no witness had been examined by the department before Inquiry Officer against him. His case was that he was not given any sufficient opportunity to examine his witnesses and produce his documents. He, therefore, contended that he was not given reasonable opportunity to defend himself at the inquiry and that the Inquiry Officer violated the principles of natural justice. He also contended that Shri A.K.Shah, who appeared before the Inquiry Officer, has not been legally appointed as Presenting Officer.

So far as the final order terminating his services was concerned, the appellant's case was that the same was passed by the Managing Director without application of mind. On these allegations, he prayed for a declaration that the final order of termination was against the principles of natural justice and violative of constitutional protection and was therefore void. He also prayed for an injunction restraining the respondent from disturbing or preventing him in discharging his duties and directing the respondent to give to the appellant all benefits of service. By amending the plaint, the appellant further prayed for a declaration that the order terminating his service is void. He also prayed for an order that he be reinstated in service. In the alternative, he prayed for a decree of Rs.5258/- as damages being the amount of salary till the date of the suit.

The respondent resisted the suit by filing its

written statement at Exh.11. It contended that the suit was barred by the provisions of Specific Relief Act since contract of personal service cannot be specifically enforced. The respondent also contended that the appellant had not exhausted the remedy of appeal under the department rules to the Personnel Committee against the decision of the Managing Director and therefore the suit was premature. The respondent denied the various allegations made by the appellant in the plaint about the legality of the charge-sheet and the inquiry and the final order. The respondent denied that its Officer had acted in order to harass the appellant. The allegation of mala fides was also denied. The respondent denied that the charge-sheet did not conform to the service rules or that the Managing Director was not a competent authority as alleged. It did not admit that as the inquiry was not completed within three weeks for submitting his report, the same was vitiated. It did not admit the contention that the inquiry could not have been held and the impugned order could not have been passed before the prosecution launched against the appellant came to be finalised. The respondent contended that the appellant had no right to be represented by the Advocate or the President of the Union before the Inquiry Officer and his request for the same was rightly rejected. As for inspection and copies of documents, the respondent's case was that the copies of all those documents upon which reliance was placed by the department were furnished to the appellant and whenever the appellant made a demand for inspection/copies of documents which were irrelevant, such demands were rightly turned down. The respondent denied the allegation that the appellant was not given opportunity to produce the documents before the Inquiry Officer. The respondent denied the allegation that the appellant was not given a reasonable opportunity and that the principles of natural justice were not observed by the Inquiry Officer. The respondent contended that the Managing Director was the competent authority and passed the final order after full application of mind.

The learned trial Judge raised the following issues as arising from the pleading of the parties:

- "1. Is the suit not maintainable in view of the provisions of Specific Relief Act?
2. Is the suit for injunction maintainable?
3. Is the suit not maintainable as premature as no appeal is filed?

4. Is plaintiff entitled to permanent injunction as prayed?
5. Is the inquiry and/or order passed thereafter against the principles of natural justice, illegal and arbitrary?"

At the trial, the appellant gave oral evidence at Exh.39. No oral evidence was led on behalf of the respondent. Certain documents were produced by both the parties and the entire file of the inquiry proceedings was also produced on the record. The learned trial Judge, after considering the evidence on record and submissions made on behalf of the parties, recorded findings on issues Nos.1,2 and 3 in favour of the appellant. However, the main and material issue was issue No.5. Before proceeding to consider this issue, the learned trial Judge referred to the scope of the jurisdiction of the civil court in service matters as follows in paragraph 10:-

"(10) It is now well settled that the jurisdiction of the Civil Court in such a service matter is very limited. An order of domestic Tribunal could be assailed before the Civil Court only on limited grounds; such as want of jurisdiction in the authority which passed the order; or that the authority passing in the order had exceeded the jurisdiction, or that no notice of the inquiry was given to him, or that he was not given a reasonable opportunity to defend himself at the inquiry or that the principles of natural justice were flagrantly violated. It is equally well settled that it is not for the Civil Court to go into the question whether the evidence before the Inquiry Officer was sufficient to warrant a finding as recorded by the Inquiry Officer. Appreciation of the evidence and determination of question of sufficiency or otherwise thereof is exclusively within the domain of the domestic tribunal and it is not for the Civil Court to reappreciate the evidence itself and say that the finding of the Inquiry Officer was not justifiable. True, if the finding of the Inquiry Officer is based upon no evidence, the Civil Court certainly will have the jurisdiction to interfere and grant the plaintiff the appropriate reliefs, because a finding based on no evidence is no finding in the eye of law and whomsoever recorded a finding on

no evidence must be taken to have violated the principles of natural justice. It is in this back-ground of settled legal position that while rejecting the contention of the defendant that as the plaintiff has not exhausted the appeal remedy, the suit would not be maintainable. I will now proceed to consider the contentions of the plaintiff."

Thereafter the learned Judge referred to the articles of charge and the learned Judge noted that in the charge-sheet itself the appellant was clearly posted with the knowledge of what were the charges against him and in respect of the first three charges, the appellant was also posted with the knowledge that he had admitted the fact contained in those charges by his letter.

The learned Judge then referred to the appellant's reply to the charge-sheet dated 22.1.1979. As noted by the learned Judge in his reply, the appellant did not at all controvert the facts about the shortages of fertilizers and pesticides and about his having maintained his own personal account in the account books of the respondent and having retained large sums of money of the respondent with him by not crediting those sums in the bank account of the defendant. His contention was that as a police case was lodged, the inquiry could not be held against him till the criminal prosecution was finally concluded. In paragraph (3) of the reply, the appellant tried to meet with the allegation of the charge that he, in violation of or in disregard of the instructions not to sell material or goods of the defendant on credit, sold the goods and materials to certain parties on credit. The appellant denied having received any such instructions. According to him, at a meeting held on September 3, 1976 at Kamrej Complex of the persons in charge of lenders and the entrepreneurs for the purpose of boosting the sales, it was discussed and oral instructions were issued by the Divisional Manager (Agro Service) and the Divisional Manager (Marketing) that the goods to the solvent parties may be sold on credit till the time their bank transfers were effected. He, therefore, asserted that if he sold the goods on credit, he could not be said to have disregarded or violated instructions of the Corporation and he should not be punished for having sold the goods on credit. He said that if the parties did not pay the value of the goods, the Corporation could recover the value by taking appropriate steps against those parties.

As stated earlier, the material issue at the

trial was whether the inquiry and/or the order passed thereafter was against the principles of natural justice, illegal and arbitrary. This was a broad issue and no issue was raised as to any specific breach of the principles of natural justice. The learned Judge in para 13 stated that though in the plaint several allegations about the charge-sheet the manner in which the inquiry was conducted and the validity of the final order have been made, at the trial the contentions were limited. It appears from the judgment that the following contentions were raised for consideration of the learned Judge. The first contention was that as the Corporation had lodged an information against the appellant with the police and the police had started investigation and filed a charge-sheet, no inquiry should be held against the plaintiff till the criminal prosecution was over. The second contention was that the appellant's defence in his written reply dated 22.1.1979 in respect of the charge that the plaintiff in violation or in disregard of the instructions sold goods on credit was not at all considered by the Inquiry Officer. The third contention was that the appellant's demand for certain documents was illegally rejected by the Inquiry Officer. The fourth contention was that he was not allowed to cross-examine the Presenting Officer. The fifth and the last contention was that though the appellant made a request to be represented by an Advocate at the inquiry, his request was turned down by the Inquiry Officer.

The learned Judge in an exhaustive and elaborate judgment dealt with all the contentions in detail and found no substance in any of them. He, therefore, came to the conclusion that there was no substance in the challenge to the inquiry and the order of termination.

Now, at the hearing of the appeal, the learned Advocate for the appellant raised various contentions. He submitted that the most crucial and important documentary evidence, i.e. Special Management Audit Report was not supplied to the appellant, though he had demanded the same from the very beginning of the initiation of the disciplinary proceeding. He submitted that this document was the basis for the initiation of the departmental inquiry and for filing the complaint and since it was not supplied the appellant could not defend his case. The departmental proceedings were therefore in his submission vitiated. Now, this specific grievance was examined by the learned trial Judge in paragraph 22 of the judgment. After coming to the conclusion that the admissions made by the appellant in his cross-examination

in his oral evidence at the trial completely negated his case about he having not been afforded an opportunity to look at the papers and about not having been given copies of the relevant papers, the learned Judge observed that the only grievance of the appellant that needed examination was that though he demanded the special management audit report during the course of the inquiry, he was not given the same. The learned Judge proceeded to observe that he had gone through the entire file and he did not find anything in the file to substantiate the appellant's case that he ever demanded that he be given an inspection of the copy of the special management audit report. In cross-examination, the appellant stated that it was by written application that he demanded the said report and that he was in possession of a copy of the application, but no such copy of that application said to have been given by him to the inquiry officer or to the department was produced before the Court. After discussing this contention in detail, the learned Judge recorded the finding that there was nothing on record of inquiry that would show that the appellant ever demanded a copy of special management audit report. I agree with the reasons given by the learned Judge for coming to this conclusion in para 22 of the judgment and it is not necessary to reproduce all that he has said on this point. It is submitted on behalf of the appellant that copies of the FIR and despatch account were not supplied, even though the said documents were demanded. The learned Judge held that these documents were not relevant and the demand for the same was, therefore, turned down. The learned Judge has recorded a finding that all the documents that were required for and relevant to the inquiry were delivered to the appellant. I agree with the said finding. There is no merit in the contention that copies of relevant documents were not supplied.

As for the allegation that the appellant sold goods on credit in violation and in disregard of circulars and instructions, it is submitted on behalf of the appellant that as stated in the circulars and letters, if the goods are sold on credit, then Operating Manager would be personally held responsible. It is submitted that at the most In-charge Manager/Operating Manager concerned can be held responsible personally and if any loss is caused, none but the Manager in charge can be held liable. But in the present case, without holding a departmental inquiry against the Manager, only appellant was subjected to departmental inquiry and criminal complaint. As the appellant was not the Manager or Operating Manager or In-charge Manager, he cannot be held responsible. However, the charge-sheet specifically

stated that at the relevant time the appellant, who was Service Engineer, was also in charge of Bharuch Centre. There was no denial of the same at any stage. Hence there is no substance in this contention.

Then it was contended that on the same charges prosecution was launched and inquiry could not have been held till conclusion of the prosecution. However, now it is well-settled that departmental proceedings and criminal prosecution are separate proceedings in which the standards of proof are different and there is no bar to holding a departmental inquiry during the pendency of the prosecution. However, what is urged on behalf of the appellant is that during the pendency of the present appeal, the appellant was tried in the criminal Court and he came to be acquitted. The appellant has filed Civil Application No.5137 of 1993 praying for leave to produce a copy of the judgment of the criminal Court on record of the case. The prayer made in that civil application is granted and the copy of the judgment of the criminal court is ordered to be taken on record. On going through the judgment, it appears that the charge against the appellant before the Criminal Court was that he and the other accused, who was Clerk and Cashier, had misappropriated about Rs.69,908-26 ps. by selling pesticides, fertilizers and the appellant had also misappropriated another sum of Rs.20,737-51 ps. The third charge was that he had committed temporary misappropriation and he was also charged with the offences punishable under Section 408 and 477A of the Indian Penal Code. However, the charges in the departmental proceedings which have already been set out hereinabove are not the same as in the criminal trial. Moreover, in GOVIND DAS versus STATE OF BIHAR AND OTHERS, (1997) 1 SCC 361, the Supreme Court, while considering a case where there was acquittal in criminal case after the departmental proceedings were over, held as follows in para 2 of the judgment:-

"2. The only ground which has been urged by the learned counsel for the appellant in support of this appeal is that since the appellant has been acquitted in the criminal case, the order for termination of his services should have been set aside. The learned counsel has placed before us a copy of the judgment of the criminal court whereby the appellant was acquitted. We have gone through the said judgment. We find that the acquittal of the appellant is based on the view that the charges are not proved beyond reasonable doubt. Since the standard of proof required to prove a charge of misconduct in departmental proceedings is not the same as that required

to prove a criminal charge, the acquittal of the appellant in the criminal case, in these circumstances, could not, in our opinion, be made the basis for setting aside the order for termination of the services of the appellant passed in the disciplinary proceedings on the basis of evidence adduced in the departmental inquiry conducted in the charges levelled against the appellant. We, therefore, find no merit in this appeal and the same is accordingly dismissed."

In view of the said decision, it is clear that the subsequent acquittal in a criminal case cannot be made the basis for setting aside the order for termination of the services of the appellant passed in the disciplinary proceedings on the basis of evidence adduced in the departmental inquiry conducted in the charges levelled against him. Hence there is no substance in this contention also.

It was also contended on behalf of the appellant that the disciplinary authority did not apply its mind before imposing the severe punishment of dismissal and no hearing was given by the disciplinary authority. No such contention was raised before the learned trial Judge. The order of dismissal passed by the Managing Director which is at page 121 of the file of inquiry papers, clearly shows that the Managing Director clearly stated that he had gone through all the papers carefully and he observed that the charges were proved. He specifically observed that by his conduct the appellant had worked against the interest of the Corporation and the Corporation would not have confidence in such an employee. The order clearly shows that the Managing Director did apply his mind to the facts of the case. It is well-settled that the measure of punishment is within the discretion of the disciplinary authority and it is not open to the Court to interfere with the same.

The learned Advocate for the appellant cited the following authorities:-

1. 1967 Service Law Reporter 228
2. AIR 1965 March 502
3. 14 Guj. Law Times 66
4. 17 Gujarat Law Times 386
5. 1995(1) Judgment Today 23
6. 1968 Labour & Industrial Cases 584
7. AIR 1961 SC 1623
8. AIR 1978 SC 1162
9. AIR 1996 SC 2474
10. AIR 1986 SC 2118

11.AIR 1958 SC 419

12.19 G.L.R. 210

Now, some of the decisions which have been cited lay down broad principles on the applicability of natural justice and the effect and consequence of the breach thereof and the legality and validity of departmental proceedings during the pendency of the criminal trial. The other decisions on the question of reasonable opportunity turn on their own facts and are clearly distinguishable. In the circumstances, I do not consider it necessary to burden the judgment with detailed reference to each of them.

The result of the above discussion is that the appeal fails and is dismissed with costs.
